

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s.BUBNA STOCK BROKING SERVICES LTD., MEMBER - CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030707632 UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

1.0 BACKGROUND

1.1 M/s Bubna Stock Broking Services Ltd (hereinafter referred to as the 'broker') is a member of Calcutta Stock Exchange, (hereinafter referred to as 'CSE') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB030707632.

1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial year 2001- 2002 was carried out by SEBI during July 3-4 2002 pursuant to the Order dated May 17, 2002. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 ENQUIRY PROCEEDINGS

2.1 On completion of inspection, the report was forwarded to the broker. After considering the broker's reply dated August 08, 2002 an Enquiry Officer (hereinafter referred to as "EO") was appointed vide Order dated December 4, 2003 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry officer and Imposing Penalty) Regulations, 2002 (hereinafter referred as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.

2.2 A Notice dated March 22, 2004 was issued to the broker under Regulation 6 (1) of the said regulations enclosing therewith a statement of the findings of the inspection and the contraventions alleged to have been committed by the broker. The broker vide his letter dated April 15, 2004 submitted its reply to the aforesaid show cause notice. Vide the said show cause notice, the Enquiry Officer had specifically advised the broker to indicate whether it desired to be heard in person. However, in its reply, the broker did not make any request for personal hearing and hence the Enquiry Officer proceeded with the enquiry based on the reply submitted by the broker. The Enquiry officer submitted its report dated June 6, 2004 and recommended a major penalty of suspension of certificate of registration for a period of one year on the broker.

3.0 SHOW CAUSE NOTICE AND THE BROKER'S SUBMISSIONS

3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated July 16, 2004, in terms of Regulation 13(2) of the said Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The broker replied to the show cause notice vide its letters dated August 3, 2004 and September 6, 2004.

4.0 PERSONAL HEARING

4.1 The broker was given an opportunity of personal hearing on September 14, 2004. Due to change in the Authority, a fresh opportunity of personal hearing before me was granted to the broker on April 12, 2006. Shri.Gopi Chand Bansal, Director of Bubna Stock Broking and Shri Anand Kumar Tiwari, Authorised Representative appeared on behalf of the broker and made submissions.

5.0 CONSIDERATION OF ISSUES

5.1 I have carefully considered the findings of the Inspection, Enquiry, the replies submitted by the broker to the show cause notice and the submissions made during the personal hearing and my observations are as under :

5.2 a) Non-maintenance of order book and margin book

The Enquiry Officer found that as on the date of inspection, the broker was not maintaining the order book and that it started maintaining the order book subsequent to inspection. Hence the EO found the broker guilty of violating the provisions of SEBI Circular dated February 11, 1997 by not maintaining the order book as stipulated under the Circular. The broker submitted that it is regularly maintaining the order book in the name and nomenclature of rough register and the same was regularly reconciled with the actual trades executed on daily basis and accordingly confirmed to its clients. I note from the submissions of the broker that it has been maintaining Order Register and the same was being reconciled with the actual trades executed on daily basis. The said register contained the information such as identification of the person placing the order, name of the client, description, value of securities bought or sold, date and time of the order received etc. The broker

further stated that the terms and conditions of the order were contained in the contract notes being issued by the broker to its clients. Though maintenance of order book must be strictly complied with and cannot be a matter of convenience of the broker, I find that a lenient view may be taken as the broker had been maintaining the same in some other manner, that is, in the form of a rough register. The EO also found that the order book was maintained by the broker subsequent to inspection.

As regards the allegation of non maintenance of margin book, the EO found the broker guilty of violation of Regulation 17(1)(k) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The broker submitted that since it was not receiving any margin from the clients, it did not maintain any margin deposit register, and for any bulk purchase orders, it used to receive payments in advance from clients which would serve the purpose of margin. The broker further submitted that deposits given to exchange, margin statements were downloaded from the exchange and maintained. I find that as the broker has been downloading the margin statements from the exchange and maintaining it, no stringent action needs to be taken against it as has been held by the Hon'ble SAT in the matter of Radar Securities Limited Vs. SEBI (Appeal No. 22/2003 dated 30.05.03) wherein it held that when a stock broker had deposited margin money with the Stock Exchange and downloaded the data available on the Exchange's computer, it was to be held that broker had maintained effectively record of its margin deposits and failure to maintain information in book form would not be considered as a grave violation of Regulation 17(1) (k) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. .

b) Client member agreement and client registration forms not duly filled in

The EO found several instances of irregular execution of client broker forms from the inspection report, some of which were serious in nature and hence found the broker guilty of violation of SEBI Circular dated February 11, 1997. The broker submitted that it could not get the client broker agreement executed on the stamp paper due to non-availability of the same with the treasury department. As an alternative, it affixed adhesive stamps on all the Client Agreement Forms which are legally acceptable and enforceable as in the case of execution of agreement on non judicial stamp paper. It further submitted that only in one or two instances, the date of birth of the client was not mentioned or the signature was missing at one place. I find from the inspection report that there were six instances of failure to maintain client agreement and registration forms and in majority of the cases, the proof of identity was not kept and some agreements were not even signed by the clients. I, therefore, agree with the findings of the EO.

c) Failure to make payment to clients within 48 hours

The EO found that the broker was required to deliver the securities/make payments to the clients within 48 hours of the pay out declared by the Exchange for the relevant settlement. As payment was delayed beyond the statutory period, the EO found that the broker violated the provisions of SEBI Circular No.SMD/SED/Cir/23321 dated November 18, 1993 and Clause B(1) of the code of conduct under Regulation 7 of SEBI(Stock Brokers and Sub-brokers) Regulations, 1992. The broker submitted that only in five instances the payments to the clients were made beyond the statutory period based on the specific written request of the clients to hold delivery and payments so that it could be adjusted with their subsequent transactions. I find that there are 5 instances of delayed payment and the period of delay ranges from 7 to 52 days in different cases. Though the broker claims that the delay was on account of specific written request of the clients to hold delivery and payments, there is no documentary evidence in support of his contention. I, therefore, have no reasons to differ with the findings of the EO.

d) Non segregation of clients' / own funds

It has been alleged that the broker has not maintained separate accounts for clients' fund and its own funds and that the broker made certain payments such as electricity charges, telephone charges, etc., through the clients' account and such expenses were not client related. The EO after considering the submissions of the broker, found it guilty of violating the SEBI Circular dated November 18, 1993. The broker stated that whatever amounts were withdrawn from clients' account for meeting small expenses like telephone expenses, electric bills, rent etc. represented only brokerage income belonging to it. I find that the broker's explanation clearly indicates that there was no segregation of clients' funds and own funds and the broker had not maintained separate accounts for clients funds and own funds. The objective of maintaining separate accounts is to prevent its misuse. However, in the absence of any complaints from clients, no substantive punishment on the broker is called for.

e) Failure to collect margins from the clients

The EO found that the broker submitted during inspection that it received payment in advance from most of its clients whereas in its reply to the show cause notice, the broker submitted that in all cases it took 100% payment in advance. The EO observed the inconsistency in both the replies of the broker and found that the broker did not collect margins from some of the clients. The broker also did not submit any documentary evidence in support of its claim that it collects 100% amount in advance from the clients. The EO, therefore, found the broker guilty of violating SEBI circular dated February 4, 2000. As non-collection of requisite margins from clients would put the broker at risk, I have no reasons to differ with the findings of the EO.

f) Delay in payment of turnover fee

As the inspection report was silent about the amount of fee liability, the EO did not record any findings. The broker submitted vide letter dated September 20, 2004 that it had already paid the turnover fees to SEBI and also submitted an undertaking to pay the interest liability by availing the benefit of amnesty scheme. In view of the above, separate action may be initiated in accordance with SEBI Regulations, in the event of shortfall in payment.

5.3 On a careful consideration of the findings of the EO and the submissions made by the broker, I find that out of the six charges discussed above, the broker has been found guilty of three violations. Taking the facts and circumstances of the case into consideration, I find that a minor penalty of suspension of certificate of registration of the broker for a period of fifteen days would be appropriate and adequate.

6.0 **ORDER**

6.1 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby suspend the certificate of registration of M/s.Bubna Stock Broking Services Ltd., Member, Calcutta Stock Exchange, with Registration Number INB030707632 for a period of 15 days.

6.2 This order shall come into force on expiry of 21 days from the date of this order.

Place: Mumbai

Date: 22.5.06

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India